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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

CRL.R.C.No.19 of 2004
and
Crl.M.P.No.82 of 2004

A.L.Lakshmanan .. Petitioner

-vs-

K.N.Palanisamy .. Respondent

This Revision is filed under Section 397 r/w 401 Cr.P.C. against the order passed in Crl.M.P.No.9271/2003 in C.C.No.178/2003 dated 31.12.2003 on the file of the Judicial Magistrate NO.1, Coimbatore.

For petitioner : : Mr.M.Deivanandam
For respondent : : Mr.Anand Venkatesh

O R D E R

This revision has been preferred against the order passed in Crl.M.P.No.9271 of 2003 in C.C.No.178 of 2003 on the file of Judicial Magistrate No.1, Coimbatore.

2. The said petition was filed before the learned Judicial Magistrate -1, Coimbatore for making corrections in the date of the promissory note as 2.9.2002 instead of 2.9.2000. The learned Judicial Magistrate has allowed the said petition permitting the complainant to make necessary corrections in the complaint regarding the date of the promissory note as indicated above which necessitated the accused to prefer this revision.

3. The only point for determination in this revision is whether the trial Court has got inherent power to direct the complainant to make corrections in the averments made in the complaint, after taking cognizance of the complaint?

4. Heard Mr.M.Deivanandam, learned counsel appearing for the petitioner and Mr.Anand Venkatesh, learned counsel appearing for th respondent and considered their rival submissions.

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5. The Point:

The learned counsel appearing for the respondent relying on a decision reported in Sankaran Nath-v- Dr.Sachidananda Das(1969 CriL.J.575) contended that the Judicial Magistrate has got every power to make corrections subsequently in the order passed by him and it is corresponding to the exercise of power of the Civil Court under Section 151 of C.P.C. The said facts of the ratio will not be applicable to the present facts of the case because an order passed under Section 144 of Cr.P.C. by the Additional District Magistrate (Executive) Cuttack was challenged before the High Court of Orissa and under such circumstances, the High Court of Orissa has held that the Executive Magistrate, while exercising his powers under Section 144 of Cr.P.C., is competent to pass necessary correctional order under the power of revision. The said ratio will not be applicable to the present facts of the case because herein the order passed by the Judicial Magistrate is under challenge and not the order passed by an Executive Magistrate.

6. The learned counsel appearing for respondent relying on yet another decision reported in Ramibai-v.Nathu and another (AIR 1961 Madhya Pradesh 25) wherein it has been held by the said Court that the Subordinate Courts have inherent powers to prevent abuse of the process of the Court or to secure ends of justice, in absence of express provision. The short facts of the case is that in a private complaint, the first class Judicial Magistrate, after the disposal of the private complaint, had passed an order of status quo which was challenged before the High Court of Madhya Pradesh . At the time of filing of the complaint, the accused were in possession of the property but on the basis of the complaint of the complainant, the case was charge sheeted under Section 452 of IPC against the accused. The complaint was dismissed on the ground that the complainant was not in possession of the house as she claimed and the allegations made by her in the complaint are all false and frivolous. After acquitting the accused, the learned Judicial Magistrate passed an order directing the police to restore the possession to the accused, after removing the complainant. Only under such circumstances, the High Court has upheld the order of the Judicial Magistrate, which was passed, subsequent to the disposal of the private complaint in order to secure ends of justice in the absence of express provision of law. The said facts also will not be applicable to the present facts of the case because here admittedly pending trial, the complainant has filed the petition to permit him to correct the date of the promissory note in the complaint.

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7. Per contra, the learned counsel appearing for the revision petitioner relying on a decision reported in A.Vinayagam-v- Dr.Subash Chandran(2000-1 L.W.(cri) 460) and contended that once a Magistrate has taken cognizance of the complaint, then he cannot exercise his inherent powers by returning the complaint to rectify the defects. The relevant observation in the said ratio runs as follows:

> "Law does not know or provide any other mode of dealing with the complaint, much less returning the complaint. It is not possible for a Magistrate to return the complaint for the so called defects and if the defects are there in the complaint, the complainant has to suffer. There is no warrant in the Criminal Procedure Code or the Criminal Rules of Practice, empowering the Magistrate to return the complaint just because he thinks that there are any defects. In this behalf, the observation by both the learned Judges that the Magistrate has a power to return the complaint because he has a power to accept is clearly incorrect. In the first place, the Magistrate does not have a "power" to accept the complaint. This is not the power of the Court. That is the "duty" on the part of the Court in contradistinction to its "powers". Again unless there is a specific provision in the Code or the Rules, the Magistrate cannot find out his own procedure by returning the complaint as it is. In fact, when the complainant presents the case to the Magistrate that is not the stage of examining the defects and it is not the Magistrate to examine the so called defects in the complaint. All that the Magistrate has to do is to consider the same by ordering the examination of complainant and/or as the case may be, his witnesses. It was strenuously suggested that if there are some formal defects like the age is not stated or the name of the father of the accused is not stated, the complainant should get a fair chance to correct the defects. We only observe that it is for the complainant to produce a defectless complaint, if because of such defects, such as non-mentioning of the age and names of father etc., the identity of the accused prson becomes suspicious or is not established properly

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> then, the complainant must suffer for his defective complaint, but under no circumstances, could the Magistrate return the complaint, particularly after the Court-seal has been put on that complaint and the Court -fees stamps have been cancelled then , as rightly found by Janarthanam,J, the complaint becomes the court property".

Here admittedly,P.W.1 was examined in chief and through him Exs P1 to P5 have been marked already. If this Court ialso endorsed the views of the trial Court, then the necessary corrections are also to be made in the notice sent by the complainant, which will go to the root of the matter. The amendment sought for is if ordered, it will nodoubt change the entire character of the complaint. Under such circumstances, I am of the view that the order passed by the learned trial Judge in Crl.M.P.No.9271 of 2003 in C.C.No.178 of 2003 on the file of the learned Judicial Magistrate No.1, Coimbatore is liable to be set aside for the reasons indicated above and accordingly the same is set aside.

8. In fine, the revision is allowed and the order passed by the learned Judicial Magistrate No.1, Coimbatore in Crl.M.P.No.9271 of 2003 in C.C.No.178 of 2003 is set aside and the learned Judicial Magistrate is directed to proceed with C.C.No.178 of 2003 and dispose of the same, within a period of two months from the date of receipt of a copy of this order. Consequently, connected Crl.M.P.No.82 of 2004 is closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

sg

To
1. The Judicial Magistrate No.1, Coimbatore
2. -do- through the Chief Judicial Magistrate, Coimbatore

1 cc to Mr.G.R. Swaminathan, Advocate, Sr. 38305
1 cc to Mr.N. Anand Venkatesh, Advocate, sR. 37695

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